



THE CANADIAN
BAR ASSOCIATION
British Columbia Branch

The Honourable David Lametti,
Minister of Justice and Attorney General of Canada
House of Commons Ottawa, Ontario K1A 0A6

January 16, 2020

Dear Minister:

I write to you as President of the Canadian Bar Association, BC Branch (CBABC), which represents more than 7000 members, the bulk of whom are lawyers practicing in British Columbia. I regularly hear from members – particularly those practicing litigation – who are concerned about the availability of court dates and appearances in smaller communities throughout BC. The lack of availability of judges has a significant impact on timely and effective access to justice for those who find themselves involved in our justice system.

Our Supreme Court of British Columbia is presently 7 judges below complement. As a result, parties are regularly arriving at court for trials and hearings, then are being sent away because of a lack of judges to hear the cases. Those parties have often spent substantial time and money preparing for court appearances, and witnesses have also been inconvenienced. The financial cost to those involved is substantial, but the emotional cost is often equally significant as those seeking finality to their disputes are left waiting months or even years longer.

I recognize that the federal government made a number of key changes in 2016 to the judicial appointment process. Appointments were delayed while those changes were implemented, and a new Judicial Advisory Committee for British Columbia was appointed in January of 2017, which resulted in several new appointments.

However, in the 2018 Annual Report of the British Columbia Supreme Court, it is noted that there were 5 judicial vacancies on the Court as at December 31, 2018. The report went on to say: *“Judicial vacancies continue to impact Court’s capacity to provide hearing dates for litigants in a timely manner. When the Court is below its full complement, scheduled trials and long chambers applications must sometimes be bumped and rescheduled. Bumping matters increases the cost of litigation when work undertaken to prepare for a trial or a long chambers application has to be redone, and witnesses and experts who have traveled and taken time off of work must reappear at a later date.”*

I wanted to make certain that you are aware that the judicial complement continues to be a matter of significant concern to the Bar in British Columbia, and continues to have a significant impact on access to justice in our province. Attached to this letter you will find some examples of stories submitted by members illustrating the issues experienced both in Vancouver and in smaller communities due to the delays caused by matters being rescheduled due to unavailability of judges.

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I would encourage you to ensure that the Judicial Advisory Committee in British Columbia remains at full membership and operates in a timely manner, and bring forward recommended appointments in a more timely manner.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ken Armstrong', written in a cursive style.

Kenneth Armstrong
CBABC President 2019/2020

cc. Honourable Chief Justice Christopher E. Hinkson
Honourable David Eby, QC, Attorney General (BC)
CBA National (Advocacy), Attn: Tamra Thompson

Attachment: examples from lawyers (2 pages)

Comments from lawyers:

Last minute trial cancellations:

“On Monday, Chief Justice Hinkson adjourned 11 Supreme Court matters, many of which were motor vehicle accident claims. He is quoted in a Vancouver Sun article written by [@ianmulgrew](#) as saying it was due to a shortage of judicial appointments. The court is currently down 7 judges....I was one of the lucky ones; my matter got on. For the other matters, justice delayed is justice denied. Further, litigants on both sides, including ICBC insured defendants in motor vehicle accident claims, will incur increased costs. We need more federal judicial appointments!”

Chambers applications left unaddressed despite trial cancellation:

“During the last assize in Cranbrook beginning November 25, Mr. L’s trial settled, so they flew the judge away after Monday chambers. They did so notwithstanding that there was a somewhat urgent lengthy application set for the assize, and notwithstanding there were six chambers applications adjourned due to lack of court time on the Monday (that could have filled a day by themselves), three of which have been scheduled for the December 16 Nelson assize as there is a gap of two months to the next assize in Cranbrook, being January 20.

Three of the adjourned applications were for committeeships and one was for a Plan of Arrangement. It is unacceptable that, especially when it comes to committeeships, the applications weren’t heard. These are peoples’ very lives we are talking about, people who are unable to take care of themselves. Not having someone appointed to take care of them is very serious.

I can’t understand the reasoning behind pulling the judges out early before their lists are cleared. It would certainly make sense to do that if the Chambers list was cleared as well and the assize thereby ended early, but in the circumstances it would seem that there is a presumption that trials are important but chambers matters are not. “

And:

“I had recently set a short leave application for hearing on the first day of the assize on November 26th. The date had been vetted through trial scheduling. Unfortunately, on the chambers date of November 25th I was advised that the judge would be leaving after chambers so my matter was called ahead to be spoken to at 2:00 p.m. on November 25th. To my surprise, various criminal matters had been scheduled for both the morning and the afternoon chambers sitting with the result that several civil chambers applications had to be adjourned. I made the comment to the clerk that there appeared to be at least four hours of chambers matters that were bumped from the list when they could have easily been set for the next day.

The net result is that my short leave application is being heard in Nelson on December 16th, almost a month after the application was filed and short leave granted.

My suggestion would be that trial scheduling contact the clerk on the afternoon of chambers and at least get an idea of what remains on the chambers list before deciding to pull the judge. On this occasion, it appeared the decision was made before chambers had even commenced on Monday.”

And

“This Sunday I drove to Nelson for a 2 hr chambers app on Monday. Court ran out of time and there was no more court time that week as the judge had to catch a flight on Thursday at 3:30 (despite it originally being a 10 day assize). We were adjourned generally. As we were being adjourned I asked the court for leave to appear by phone next time but was denied. I ended up staying another night as I didn’t want to drive home in the dark under heavy snow. It is noteworthy that in this case my clients had tried to retain counsel from the West Kootenay before looking in the East Kootenay.”

Desk Order matters not processed in timely manner:

“A further issue is that of desk order matters not being processed because the justice leaves town. I filed two different desk orders about 2 weeks before the last assize so that they would have been vetted by the Registry before the assize and therefore be in the justice’s “in-tray,” ready for the justice’s attention, during the assize. They are sitting there still as the justice left town at the end of the court day on the Monday (November 25). When we had our resident judge, Justice Melnick, he routinely “dropped by” the Registry and dealt with desk orders regardless of where he was sitting – he may have been sitting in Vancouver all week but he did not let desk orders pile up. I gather Mr. Justice McEwan in Nelson has the same practice. “

Delays causing unjust results:

“I have had this problem five times I can remember in the last 18 months and I can give you the specific file numbers and details if that is what you are looking for.

It happened twice in Cranbrook SC resulting in the client being unable to enforce a restrictive covenant; the issue became overtaken by time after the covenant expired. Justice was denied and the client was furious.

In Rossland and Nelson it occurs but with McEwan J. still in charge (for now) matters do not usually fall off the rails that badly. I have an application to set aside default that has languished for lack of court time for many months (Rossland SC file), set to proceed on Monday in Nelson SC chambers, fingers crossed...”

END